

Message Text

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P 130130Z APR 78
FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC PRIORITY 0651
INFO AMEMBASSY ANKARA
AMEMBASSY ATHENS
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BRUSSELS FOR USEEC

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E.O. 11652: GDS
TAGS: EGEN, ECOSOC, UN

SUBJECT: ECOSOC WORKING GROUP ON CORRUPT PRACTICES

1. SUMMARY: AD HOC INTERGOVERNMENTAL WORKING GROUP ON CORRUPT PRACTICES HAS BEEN WORKING SLOWLY THROUGH TEXT OF WORKING GROUP'S 1977 REPORT AND FRENCH PROPOSED TREATY. WE NOW EXPECT TO CONCLUDE FIRST READING TODAY. MUCH USEFUL TECHNICAL WORK HAS BEEN DONE BUT BASIC LEGAL AND POLITICAL QUESTIONS REMAIN UNRESOLVED. IT IS UNCLEAR WHETHER IT WILL BE POSSIBLE TO RESOLVE ANY OF THE MAJOR ISSUES IN THE LAST TWO DAYS OF THIS WEEK. THE G-77 HAS BEEN PARTICIPATING VERY LITTLE IN THE SUBSTANTIVE DISCUSSIONS, AND THE FRENCH HAVE CONSISTENTLY BLOCKED AGREEMENT ON ANY SUBSTANTIVE ISSUE REQUIRING DEPARTURE FROM THEIR TEXT. WE ARE ATTEMPTING TO SCHEDULE A RESUMED SESSION OF ONE WEEK, PROBABLY IN GENEVA IN THE LAST WEEK OF JUNE OR FIRST WEEK OF JULY, BUT ECOSOC SECRETARIAT HAS NOT BEEN COOPERATIVE.

2. POLITICAL BACKGROUND: G-77 PARTICIPATION HAS BEEN SO SPARSE THAT IT HAS BEEN DIFFICULT TO OBTAIN THE NECESSARY QUORUM OF FOUR REPS FROM EACH INTERESTED REGION. CONSEQUENTLY, MEETINGS HAVE STARTED VERY LATE AND CHAIRMAN (PARSI-IRAN) HAS ADOPTED PROCEDURE OF CONDUCTING MEETINGS ON INFORMAL BASIS UNTIL A QUORUM CAN BE OBTAINED. GENERALLY, THE LATINS HAVE BEEN REPRESENTED BY COLOMBIA (AMB. BOTERO, VICE-CHAIRMAN),
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MEXICO AND VENEZUELA. BRAZIL, ARGENTINA AND CUBA COME OCCASIONALLY. AFRICA IS GENERALLY REPRESENTED BY UGANDA (RAPPORTEUR) AND ZAIRE. CHANA, ZAMBIA AND OTHERS ATTEND SPORADICALLY. THE NIGERIAN REP, ABUAH, WHO HAD BEEN ONE OF THE STRONGEST VOICES OF THE G-77 IN THIS GROUP RARELY APPEARS AND ALGERIA IS NOT ATTENDING THE MEETINGS AS IT DID LAST YEAR. THE ASIAN GROUP IS REPRESENTED BY IRAN AND JAPAN, AND ON OCCASION BY THAILAND, PAKISTAN OR INDIA. THE G-77 HAS NOT YET RAISED THE CODE OF CONDUCT, AND THE ISSUE OF INVESTMENT IN SOUTHERN AFRICA WILL BE DISCUSSED TODAY. THE G-77 IS NOT TAKING A POSITION AS A GROUP ON THE ISSUES BEFORE THE IGWG AND APPARENTLY IS NOT MEETING TO DISCUSS THEM. USUN HAS BEEN INFORMED BY ABUAH (NIGERIA) THAT THE G-77 DISCUSSED THIS PROCEDURE AND APPARENTLY DECIDED IT SHOULD NOT TAKE GROUP POSITIONS ON TECHNICAL QUESTIONS UNDER DISCUSSION. IT REMAINS TO BE SEEN WHETHER THE G-77 WILL CHALLENGE THE EMERGING WORK PRODUCT WHICH FOLLOWS THE GENERAL CONTOURS OF THE FRENCH DRAFT.

3. AT US INITIATIVE, OECD DELS ARE HOLDING EXTENSIVE

CONSULTATIONS ON ALL RELEVANT ISSUES. NEVERTHELESS,
IT HAS NOT BEEN POSSIBLE TO ESTABLISH A UNIFIED POSITION
AND THE DEVELOPED COUNTRIES FREQUENTLY DEBATE THE LEGAL
QUESTIONS IN THE WORKING GROUP ITSELF. DURING THE COURSE
OF OECD CONSULTATIONS THERE HAS EMERGED BROAD SUPPORT
FOR BASIC US PROPOSALS SUCH AS CRIMINALIZATION AND
RECORD KEEPING OF AGENTS' FEES TO BE USED IN THE CONTEXT
OF JUDICIAL ASSISTANCE FOR CRIMINAL LAW ENFORCEMENT.
(JAPAN, FRG AND UK MAY HAVE DEEPER RESERVATIONS ON
CRIMINALIZATION THAN EXPRESSED HERE.) ALL OECD DELS
EXCEPT FRANCE APPEAR READY TO ACCEPT SOME TEXT ON
RECORDS OF THE LATTER POINT, ALTHOUGH JAPAN AND ITALY
PREFER MORE GENERAL FORMULATIONS AND SEVERAL OBJECT TO

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REGULATION OF FOREIGN AFFILIATES.

4. SUBSTANCE: AT THIS POINT, THE MAJOR ISSUES IN IGWG INCLUDE: THE SCOPE OF THE OFFENSE, EXCLUSION OF "GREASE PAYMENTS", THE TERRITORIAL LINK, AND THE DEFINITION OF PUBLIC OFFICIALS, PARTICULARLY AS REGARDS PARLIAMEN- TARIANS AND EMPLOYEES OF STATE CONTROLLED COMMERCIAL ENTERPRISES. FRANCE IS ALSO RAISING DIFFICULTIES CON- CERNING THE WORKING GROUP'S PROVISIONS ON EXTRADITION AND JUDICIAL ASSISTANCE. THE ISSUE AS TO SCOPE OF THE OFFENSE (ARTICLE 1) IS FRAMED BY THE BROAD FRENCH PROPOSAL WHICH ENCOMPASSES PAYMENTS "IN CONNECTION WITH AN INTERNATIONAL COMMERCIAL TRANSACTION" AND THE US PROPOSAL REFERRING TO PAYMENTS "FOR THE PURPOSE OF OBTAINING OR RETAINING BUSINESS." THE G-77 TEND TO FAVOR THE FRENCH FORMULA AND HAVE NOT YET ACCEPTED A US PROPOSED COMPROMISE "IN CONNECTION WITH THE NEGOTIATION, CONCLUSION, RETENTION OR REVISION" OF AN INTERNATIONAL COMMERCIAL TRANSACTION. WE HAVE ALSO BEEN UNABLE TO OBTAIN G-77 OR FRENCH SUPPORT THUS FAR FOR ANY FORMULA EXCLUDING FACILITATING PAYMENTS. IN THIS RESPECT, THE US HAS PROPOSED EXCLUSIONS IN THE DEFINITION OF PUBLIC OFFICIALS (ARTICLE 3) AND THE EXCLUSION OF "MINOR OFFENSES" IN ARTICLE 5 OF THE FRENCH TEXT.

5. THE SECOND MAJOR ISSUE CENTERS ON FRANCE'S INSIST- ENCE ON JURISDICTION BASED ON THE NATIONALITY PRINCIPLE
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WITHOUT TERRITORIAL LINK. ON THIS ISSUE, FRANCE HAS THE SUPPORT OF THE EUROPEAN COMMUNITY EXCEPT FOR BRITAIN

WHICH IS VERY RELUCTANT TO ACCEPT ANY JURISDICTION THAT DOES NOT REQUIRE SUBSTANTIAL ACTS IN THE TERRITORY OF A STATE. THE US HAS PROPOSED A COMPROMISE FORMULA WHEREBY STATES WOULD ESTABLISH JURISDICTION OVER AN OFFENSE COMMITTED BY THEIR NATIONALS WHEN THE OFFENSE IS CONNECTED WITH THE STATE'S FOREIGN COMMERCE. WE UNDERSTAND THAT AUSTRALIA IS PREPARED TO ACCEPT THE NATIONALITY PRINCIPLE, ALTHOUGH THEY WILL NOT ARGUE FOR ITS INCLUSION. CANADA HAS FORMALLY SUPPORTED A TERRITORIAL LINK, BUT IS SERIOUSLY CONSIDERING ACCEPTANCE OF THE NATIONALITY PRINCIPLE. THE G-77 HAS NOT TAKEN A FIRM POSITION BUT LEAN TOWARDS THE FRENCH VIEW.

6. ON EXTRADITION, FRANCE IS MAKING A MAJOR POINT OF THE DISCREPANCY IN THE HAGUE CONVENTION FORMULATION WHICH ESTABLISHES BINDING EXTRADITION RELATIONS BETWEEN STATES WHICH DO NOT REQUIRE TREATIES AS A BASIS FOR EXTRADITION BUT ALLOWS DISCRETION FOR THOSE STATES (LIKE THE US) WHICH DO. THE US DEL HAS TAKEN THE POSITION THAT IT CANNOT ACCEPT BINDING EXTRADITION RELATIONS ON BRIBERY WITHOUT A BILATERAL EXTRADITION TREATY BUT THAT IT COULD CONSIDER BRINGING THE TWO PROVISIONS INTO BALANCE. AS TO JUDICIAL ASSISTANCE, SEVERAL WEO'S OBJECT TO REFERENCE TO INTERVIEWS, IN THE WORKING GROUP REPORT; FRANCE FAVORS A MORE GENERAL MULTILATERAL COMMITMENT ON THE LINES OF THE HAGUE CONVENTION. THE UK WILL INSIST ON BILATERAL IMPLEMENTING AGREEMENTS WHEREAS ITALY IS PRESSING FOR A MORE DETAILED MULTILATERAL COMMITMENT. MOST DC'S OPPOSE CONSULTATIONS IN UN AS PROPOSED BY US BUT LDC'S SUPPORT THIS PROCEDURE.

7. THE US PROPOSALS FOR SUPPLEMENTARY MEASURES BASED ON THE ICC RECOMMENDATIONS (ARTICLE 2) RECEIVED SOME CONFIDENTIAL

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SUPPORT AND THERE IS A GOOD POSSIBILITY THAT IGWG WILL ACCEPT (A) A PROVISION REQUIRING COUNTRIES TO INCLUDE

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UNDERTAKINGS IN GOVERNMENT CONTRACTS THAT BRIBES HAVE
NOT AND WILL NOT BE PAID TO SECURE THE TRANSACTION,
AND (B) A GENERAL PROVISION BASED ON THE MONTREAL CON-
VENTION (TERRORISM) THAT CONTRACTING STATES TAKE ALL
PRACTICABLE MEASURES IN ACCORDANCE WITH NATIONAL AND
INTERNATIONAL LAW FOR THE PURPOSE OF PREVENTING THE

OFFENSES COVERED BY THE CONVENTION.

8. MEXICANS CONTINUE PRIVATELY TO OFFER SUPPORT FOR RAPID MOVEMENT OF ILLICIT PAYMENTS IN EXCHANGE FOR UNDEFINED LINK WITH CODE OF CONDUCT. IN OTHER CONVERSATIONS, THE FRENCH "APPEAR" INTERESTED IN STRIKING A BARGAIN BUT UK AND JAPANESE CONCERNS OVER CRIMINALIZATION REMAIN TO BE OVERCOME.

9. ALTHOUGH WE WILL ATTEMPT TO REDUCE BRACKETS IN TEXT TOMORROW AND FRIDAY, IT IS PREMATURE TO EXPECT RECOMMENDATION TO ECOSOC FOR DIPLOMATIC CONFERENCE IN 1979. THEREFORE, WE SHALL PRESS FOR RESUMED SESSION JUST BEFORE JULY ECOSOC TO ALLOW TIME FOR FURTHER OECD CONSULTATIONS AND DIPLOMATIC INITIATIVES WITH LDC'S. THIS ISSUE OF A RESUMED SESSION WILL BE DECIDED BY ECOSOC -- PROBABLY NEXT WEEK -- AND WILL TURN ON AVAILABILITY OF FACILITIES IN GENEVA AND POSSIBILITIES FOR A QUORUM. LEONARD

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